IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 385 OF 2002.

Shri Vithoba N. Adel,
major in age, married,
son of Nagu Vithoba Adel,
C/o Proprietor, M/s. Rajesh
Roadways Corporation,
Near Hari Mandir, Margao,
Goa. ... Petitioner.

VERSUS

1. Central Bank of India,
   a Body Corporate,
   constituted under the
   Banking Companies (Acquisition
   & Transfer of Undertakings)
   Act, 1970 having its Branch
   Offices among other places
   at Borda, Margao, Goa,
   represented by its Dy. Chief
   Officer, Mr. L.R. Naique;

2. Shri B. Sanjiva Rai,
   Businessman, residing Near
   Hari Mandir, Margao, Goa.

3. Shri Nagesh Anant Naik,
   Retail Trader,
   residing at House No.656,
   Fatorda, Margao, Goa. ... Respondents.

Mr. S.S. Kakodkar, Advocate for the Petitioner.

Mr. C.A. Ferreira, Advocate for the Respondent No.1.

CORAM: P.V. KAKADE, J.

DATE: 12TH DECEMBER, 2002.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith by consent. Heard the learned counsel for both the

sides and perused the original record and proceedings which was called for the purpose.

2. The petition is aimed against the Order passed by the learned Civil Judge, Senior Division, Margao in Special Execution Application No.22/84/A which was filed by the petitioner/Judgment Debtor No.2 at Exh.98 making various submissions to avoid payment under the Decree and the consequences thereafter. It was rejected by a reasoned order stating that the learned Executing Judge did not find any substance in the application and it came to be dismissed with costs and Warrant of Arrest was directed to be issued against the petitioner/J.D. No.2

Pending the Writ Petition, the Warrant of Arrest was stayed by an interim order of this Court dated 21st November, 2002. In the course of the hearing, the learned counsel for the petitioner sought to put reliance on the provisions of Section 51 of the C.P. Code. The proviso thereof clearly stipulates that where the Decree is for the payment of money, execution by detention in prison shall not be ordered, unless after giving the J.D. an opportunity of showing cause why he should not be committed to prison shall not be made. Therefore, in

the present case it is evident position that no formal notice contemplated under Section 51 of the C.P. Code was issued to the petitioner at all. It may be noted that merely the fact that the petitioner/J.D. No.2 was aware of the proceeding would not be sufficient unless a formal show cause notice is served upon him. In view of this situation, without further elaboration, it is held that the Order dated 10th July, 2002 passed by the learned Civil Judge S.D., Margao in Special Execution Application No.22/84/A is liable to be set aside and stands set aside.

3. It is hereby directed that the learned Trial Judge shall issue the notice contemplated under proviso to Section 51 of the C.P. Code to the petitioner/J.D. No.2 and pass appropriate orders after giving an opportunity to both the sides in this regard.

4. With these observations, the petition stands disposed of with no order as to costs. The Warrant of Arrest issued on 18th April, 2001 stands quashed.

P. V. KAKADE, J.

sl.